



**Second Follow-up Policy Monitoring
Review of Goliad County's Indigent
Defense Systems**

March 2023



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Mission: Protecting the right to counsel, improving public defense.

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Executive Summary

The Texas Indigent Defense Commission (TIDC) monitors local compliance with the Fair Defense Act through policy reviews.¹ In this second follow-up review, TIDC interviewed local staff and reviewed FY2021 case file records and FY2022 magistrate warning records. TIDC found that previous report findings dealing with the transmission of counsel requests and with timely counsel appointments remained pending.

TIDC thanks Goliad County officials and staff for their assistance in completing this review. TIDC staff stand ready to provide technical and financial assistance to remedy these issues. TIDC will conduct a third follow-up review regarding its findings within two years.²

Background

In March 2015, TIDC received a complaint alleging that some defendants in Goliad County were not receiving timely magistrate warnings or appointment of counsel. After reviewing Goliad County's magistrate warning forms, Article 15.17 data submitted to the Office of Court Administration (OCA), and misdemeanor appointment rates, TIDC conducted a limited scope policy monitoring review to examine the ability of defendants to request and receive appointed counsel in felony and misdemeanor cases.

TIDC issued a limited scope policy report on Goliad County's indigent defense practices in January 2016. The report made findings concerning the following: the ability of defendants to request counsel at the Article 15.17 hearing; delays in transmitting counsel requests to the appointing authority; untimely appointments in felony and misdemeanor cases; issues in handling waivers of counsel; and monthly justice court reports to OCA. Goliad County responded with adoption of the following measures: new magistrate warning form that included a space to request counsel; new policies to ensure prompt transmission of counsel requests and appointment of counsel; a new waiver of counsel form; and a commitment to submit monthly justice court reports to OCA. Shortly after TIDC's report, Goliad County established a public defender office operated by Texas Rio Grande Legal Aid (TRLA).

TIDC issued a follow-up report in April 2019. This report found that Goliad County had successfully addressed issues concerning the ability of defendants to request counsel at the Article 15.17 hearing, waivers of counsel, and data reporting by the justice courts. Remaining findings related to transmissions of requests to the

¹ TEX. GOV'T CODE § 79.037(a)–(b).

² 1 TEX. ADMIN. CODE § 174.28(c)(2).

appointing authority and the timeliness of appointments in felony and misdemeanor cases.

Table 1: History of Monitoring Findings for Goliad County

FDA Core Requirement	Description and Initial Year of Finding and Recommendation	Status after 2023 Review	
		Satisfied	Pending
1. Prompt Magistration	Magistrates must record whether an arrestee requested counsel. (2016)	✓ (2019)	
1. Prompt Magistration	Requests for counsel must be transmitted to the courts within 24 hours of the request being made. (2016)		✓
1. Prompt Magistration	If the magistrate has appointing authority, the magistrate must ensure reasonable assistance with affidavits at the time of the hearing, and ensure that Article 1.051 appointment time frames are met. (2023)		✓
4. Prompt Appointment	The timeliness of felony counsel appointments does not meet TIDC’s administrative threshold (90% of sample cases receive timely rulings). (2016)		✓
4. Prompt Appointment	The timeliness of misdemeanor counsel appointments does not meet TIDC’s administrative threshold (90% of sample cases receive timely rulings). (2016)		✓
4. Prompt Appointment (waivers of counsel)	The court must rule upon all pending counsel requests prior to a waiver of counsel. (2016)	✓ (2019)	
4. Prompt Appointment (waivers of counsel)	The county must adopt a waiver of counsel form that substantially conforms to Article 1.051(g). (2016)	✓ (2019)	
6. Data Reporting	Justices of the peace must report the number of persons requesting counsel to OCA as part of their Judicial Council Monthly Court Activity Reports. (2016)	✓ (2019)	

Current Review

TIDC’s policy monitoring rules require follow-up reviews where the report included noncompliance findings.³ Staff members Joel Lieurance and Kristin Meeks conducted a second follow-up review of Goliad County with site visits on September 12 and 13, 2022, and on October 25, 2022. TIDC examined whether Goliad County successfully addressed the findings and recommendations from the April 2019 report. TIDC examined misdemeanor and felony case files and met with the Justice of the Peace for Precinct 2, staff from the Goliad District and County Clerk’s office, and the coordinator for the Goliad County Court.

³ 1 TEX. ADMIN. CODE § 174.28(d)(3).

Program Assessment

Description of Local Counsel Appointment Procedures

After arrest in Goliad County, defendants go before a magistrate for the Article 15.17 hearing. The magistrates who conduct these hearings include the two justices of the peace and the county judge. At the hearing, a magistrate determines whether there is probable cause to detain the individual, sets bail, and asks defendants whether they would like to request counsel. Under Article 15.17 of the Code of Criminal Procedure, magistrates must record whether the defendant requested counsel.

When justices of the peace conduct the Article 15.17 hearing, they assist with affidavits of indigence and send both the affidavit and magistrate warning form to the district clerk that same day. The district clerk then forwards felony requests to the local administrative district judge and misdemeanor requests to the county judge. For the period reviewed, there were delays in sending and ruling on these requests.

When the county judge conducts the hearing, the judge provides the affidavit to the defendant. In FY2022, sample affidavits were not immediately completed, and there were delays in getting them back to the judge.

After cases are filed, defendants appear at the trial court. Those without counsel are able to request counsel at that time and receive a ruling on the requests the same day.

REQUIREMENT 1: CONDUCT PROMPT AND ACCURATE ARTICLE 15.17 PROCEEDINGS

Under Article 15.17 of the Code of Criminal Procedure, an arrested person must be brought before a magistrate within 48 hours.⁴ At this hearing, the magistrate must inform the person of the right to counsel, inform the person of the procedures for requesting counsel, and ensure the person has reasonable assistance in completing the necessary forms for requesting counsel.⁵ If the magistrate has authority to appoint counsel, the magistrate must appoint counsel according to the timelines set in Article 1.051.⁶ If the magistrate does not have authority to appoint counsel, the magistrate must transmit requests for counsel to the appointing authority within 24 hours.⁷ If a person is arrested on an out-of-county warrant, the

⁴ TEX. CODE CRIM. PROC. ART. 15.17(a).

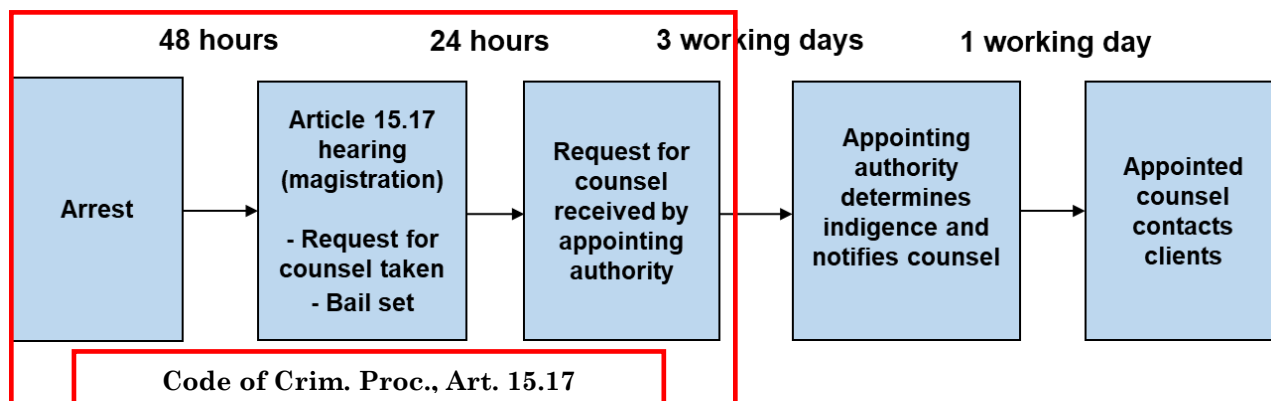
⁵ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁶ TEX. CODE CRIM. PROC. ART. 15.17(a).

⁷ TEX. CODE CRIM. PROC. ART. 15.17(a).

magistrate must perform the same duties as if the person were arrested on an in-county warrant.⁸

Figure 1a: Timeline for Appointment of Counsel in Adult Criminal Cases



Texas Judicial Council Monthly Court Activity Reports and the Ability of Arrestees to Request Counsel

Justices of the peace and municipal court judges are required to report the number of Article 15.17 hearings conducted and the number of requests for counsel from these hearings to the Office of Court Administration monthly. Both justices of the peace submitted these reports. Reported data indicates about 22% of misdemeanor arrestees and about 36% of felony arrestees requested counsel at Article 15.17 hearings in FY2021.

Assistance with Counsel Requests and Their Transmission to the Courts

In Goliad County, Article 15.17 hearings are conducted by the two justices of the peace and the county judge. The justices of the peace conduct most hearings, but in some instances, the county judge does so. When the justices of the peace conduct the hearings, the judges assist with affidavits of indigence and email magistrate warning forms and affidavits the Goliad District and County Clerk’s Office staff, which are then forwarded to the appointing judges (the district judge in felony cases and the county judge in misdemeanor cases).

When the county judge conducts Article 15.17 hearings, he is the appointing authority in misdemeanor cases, but in sample cases, there was no immediate assistance with financial affidavits. According to interviews, there was confusion as to how affidavits were to be completed and sent to the appointing authority. Five felony defendants who requested counsel in June and July of 2022 did not have their affidavits forwarded to the District and County Clerk’s Office until August 26, 2022. Based on these cases, a method to handle Article 15.17 counsel requests is not in place

⁸ TEX. CODE CRIM. PROC. ART. 15.18(a). A list of contacts to send out-of-county requests is available at: <http://tidc.tamu.edu/public.net/Reports/OutOfCountyArrestContacts.aspx>.

when the county judge acts as magistrate. Goliad County must develop procedures to ensure that if a magistrate is the appointing authority, the affidavit of indigence is completed at the time of the hearing and ruled upon according to the timelines set in Article 1.051. If the magistrate is not the appointing authority, the request and accompanying affidavit must be sent to the appointing authority within 24 hours of the request.

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 1

Conduct prompt and accurate magistration proceedings.

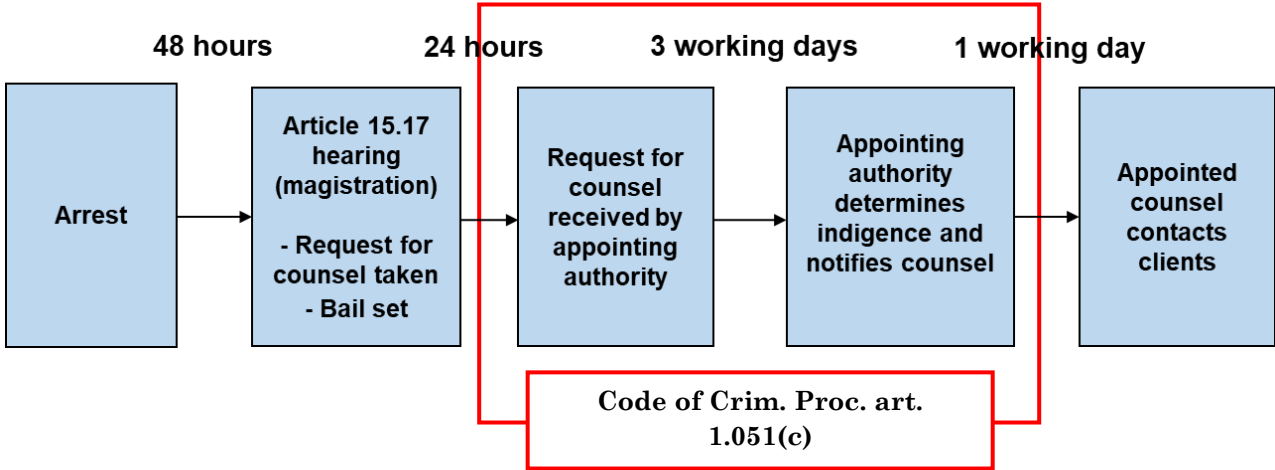
FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires magistrates who have appointing authority to (1) ensure reasonable assistance with financial affidavits at the time of the hearing and (2) rule upon those requests within Article 1.051 timelines. Goliad County must develop procedures to ensure that if the magistrate is the appointing authority, the affidavit of indigence is completed at the time of the hearing, and the affidavit of ruled upon according to the timelines set in Article 1.051. *New Finding.*

FINDING 2 AND RECOMMENDATION: Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate. *Issue Pending.*

REQUIREMENT 4: APPOINT COUNSEL PROMPTLY

Under Article 1.051(c) of the Code of Criminal Procedure, courts in counties with a population under 250,000 must rule on a request for counsel within three working days of receiving the request.

Figure 1b: Timeline for Appointment of Counsel in Adult Criminal Cases



The first opportunity for most defendants to request counsel is at the Article 15.17 hearing when a defendant appears before a magistrate and is informed of the charges against him or her. If a defendant makes bail before the Article 15.17 hearing (or is never brought before a magistrate), the defendant has the first opportunity to request counsel at the initial appearance in the trial court.

To assess the timeliness of local appointment procedures, TIDC examines case files and measures the time from counsel request until appointment of counsel or denial of indigence. Under TIDC’s monitoring rules, a county is presumed to be following the prompt appointment of counsel requirement if at least 90% of indigence determinations in the monitor’s sample are timely.⁹

Timeliness of Appointments in Felony Cases

In Goliad County, the 135th District Court Judge is the appointing authority for felony cases. The judge covers a circuit across six counties. TIDC examined 42 felony cases filed between April and September 2021 to determine the timeliness of felony appointments. From this sample, TIDC found 24 requests for counsel. Counsel was appointed in a timely manner in 50% of those cases. This falls below TIDC’s threshold (90% timely) for presuming a jurisdiction’s procedures ensure timely appointment of counsel. Goliad County must implement practices that satisfy this appointment timeline.

⁹ 1 TEX. ADMIN. CODE § 174.28.

Table 2: Times from Request to Appointment in Felony Cases

	Number from Sample	Percent of Sample
Total records examined	42	
Requests for counsel	24	
Request for counsel ruled upon in 'x' workdays		
0 workdays	6	
1 to 3 workdays + 24 hours allowed to transmit a request	6	
Timely Rulings on Requests	12	50%
Between 4 and 7 workdays	2	
More than 7 workdays	10	
No ruling on request	0	
Untimely / No Rulings on Requests	12	50%

Timeliness of Appointments in Misdemeanor Cases

In Goliad County, the Goliad County Court Judge is the appointing authority for misdemeanor cases. TIDC examined 57 misdemeanor cases filed between April and September 2021 to determine the timeliness of misdemeanor appointments. From this sample, TIDC found 33 requests for counsel. Counsel was appointed in a timely manner in 79% of those cases. This falls below TIDC's threshold (90% timely) for presuming a jurisdiction's procedures ensure timely appointment of counsel. Goliad County must implement practices that satisfy this appointment timeline.

Table 3: Times to Appointment in Misdemeanor Cases

	Number from Sample	Percent of Sample
Total records examined	57	
Requests for counsel ¹⁶	33	
Request for counsel ruled upon in 'x' workdays		
0 workdays	16	
1 to 3 workdays + 24 hours allowed to transmit a request	10	
Timely Rulings on Requests	26	79%
Between 4 and 7 workdays	2	
More than 7 workdays	4	
No ruling on request	1	
Untimely / No Rulings on Requests	7	21%

FINDINGS AND RECOMMENDATIONS FOR REQUIREMENT 4

Appoint Counsel Promptly.

FINDING 3 and RECOMMENDATION (felony cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of felony cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. Goliad County must implement practices that satisfy this appointment timeline. *Issue Pending.*

FINDING 4 AND RECOMMENDATION (misdemeanor cases): Article 1.051(c)(1) requires the court (or its designee) to rule on all requests for counsel within three working days (plus 24 hours for transferring requests to the courts) of the request being made. The monitor's sample of misdemeanor cases fell below TIDC's 90% timely threshold for presuming a jurisdiction's appointment system ensures timely appointment of counsel. Goliad County must implement practices that satisfy this appointment timeline. *Issue Pending.*

Conclusion

TIDC thanks Goliad County officials and staff for their assistance in completing this review. TIDC will conduct a follow-up review regarding its noncompliance findings within two years.¹⁰ TIDC staff stand ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

¹⁰ 1 TEX. ADMIN. CODE § 174.28(c)(2).

Findings and Recommendations from the March 2023 Review

The County must provide a written response to each of the report's findings within 60 days after the report is received by the County. TIDC stands ready to provide technical and financial assistance to remedy these issues and ensure full compliance with the Fair Defense Act.

Core Requirement 1. Conduct prompt and accurate Article 15.17 proceedings.

2023 FINDING 1 AND RECOMMENDATION: Article 15.17(a) requires magistrates who have appointing authority to (1) ensure reasonable assistance with financial affidavits at the time of the hearing and (2) rule upon those requests within Article 1.051 timelines. Goliad County must develop procedures to ensure that if the magistrate is the appointing authority, the affidavit of indigence is completed at the time of the hearing, and the affidavit of ruled upon according to the timelines set in Article 1.051. *New Finding.*

2023 FINDING 2 AND RECOMMENDATION: Requests for counsel must be promptly transmitted to the appointing authority (within 24 hours of request) as required by Article 15.17(a) and the local indigent defense plan. Article 15.17 puts the responsibility for this transmission on the magistrate. *Issue Pending.*

Core Requirement 4. Appoint counsel promptly.

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